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# INFORMATION

*For my Lord Hattoun, and Sir Robert Miln of Barn-  
toun, against the Earl of Aberdene.*

**T**He Family of *Lauderdale* having been much trusted, and imployed in the publick Service for several Generations, and especially in the Reign of King *Charles* the Second, after the Parliament 1681. there happened several considerable alterations in the Government, and the Earl of *Aberdene* was first advanced to be President of the Session, and within a few Months to be Chancellor, and then an Earl, and had the chief influence of the Affairs of this Kingdom; and albeit the Duke of *Lauderdale* had formerly demitted his Office of sole Secretary of State, and retired; yet these who came to have the Influence after him, did grudge to see any of his Family continue in the enjoyment of valuable Offices in the Kingdom: On the other hand, The King having, during the tract of many years, on all occasions, given renewed Evidences of the sense he had of the firm and faithful Service of that Family; It was no easie matter to prevail with him to remove the deceased Earl of *Lauderdale*, and his Son now Earl, from their Imployments, especially being some of their Offices, as that of General of the Mint, were during life; and therefore a huge noise is made of Malversations and Mismanagements in that Office, and of the Interest and Concern of Trade, and of the Nation, to have the same Regulat; And to this effect, a Commission for Tryal of the Mint, is invented and prepared, to be the pretence of spoiling the Earl of *Lauderdale* and his Son at once, of all their publick Imployments, their Fame and Fortune.

When this Commission was obtained, the Import of it, being far better known to the Earl of *Lauderdale*, than to the King who gave it, he did withdraw, that he might lay his Cause before his Master; but orders were given here to stop his Journey, which he foreseeing, went off, before they were intimat to him, yet the matter was so well laid, that he had no access to the King, so there was no remedy, but the Commission behoved to proceed.

Of this Commission the Members were chosen, such as were known to have testified most unkindness to that Family, and to the Earl in particular; yet some of the most eminent of these Members were so generous, as never to own the Commission, after they saw the method of Procedure, and the Prospect of it; And though the King's Advocate had never on any occasion banked the Duty of his Office, yet an Assessor was joyned to him in that Affair, who had owned himself obliged by the Earl, and a Clerk, and all was suitable to the Design.

This Commission was no Judicatory, nor in the least authorized and impowered to take the Depositions of either Parties, or Witnesses, but only to call before them the Officers of the Mint, and to cause them exhibit their Books, Registers and Accompts, and to make Tryals and



Essays, or to permit others to make the saids Essays that should be appointed; And yet the Commissioners did proceed, to oblige all the Officers of the Mint to Depone, by a method of Inquisition, without Pursuer or Libel, both in relation to pretended Malversations in themselves and others; upon which all of them were not only found lyable in extravagant Sums, but were threatned with Criminal Processes for their Lives! And after the foresaid Inquisition, there is a report framed, that it was the opinion of the Commissioners, that the Officers of the Mint had Malversed in many Particulars; and for some of these Malversations, particularly that of the Copper-Coin, the Punishment of the Law was Capital; and that the saids Officers were thereby lyable in the liquid Sums of Money, specially therein exprest, extending in all to 58000 *lib. sterling.*

Upon the report of this Commission, the Generals and other Officers of the Mint were deprived of their Offices, to which they had right for life, and of all other publick Trusts. And further, an Order was directed to the Earl of *Aberdene*, to cause Prosecute the saids Officers, both Civilly and Criminally: And by a posterior Letter from the King, also directed to the Earl of *Aberdene*, dated 2d. *October*, 1682. Wherein the King mentions a former letter appointing, that the Officers of the Mint should be Prosecute, either Civilly or Criminally; and that then it was his Majesties pleasure, that the said Officers, except my Lord *Maitland*, should be Prosecute before the Lords of Session only.

Though this Letter did not Authorize any Process to be raised against the Lord *Maitland*, yet such was the zeal for the King's Service, and punishment of Offenders, that the Lord *Maitland* was also pursued, though he had never any meddling in the matter of the Mint, nor benefit, and that he was for the most part Abroad by the King's allowance: And in this Process, appointed for Civil Effects only, the same Penalties that had been contained in the Report of the Commission, are Libelled, and that not only the Sums of Money, but likewise Corporal and Capital Punishments is there Libelled, in these words; (As also the Defenders having committed such manifest and gross Acts of Malversation, in relation to the Mint, and their respective Offices, they ought to be remitted to the Lords of Privy Council, or Lords of Justiciary, to be punished according to Law;) and in this Process, the Earl of *Aberdene* being Chancellor, and presiding in the Session, as he did in the Commission of the Mint; The Accompt is brought very near the same Ballance, and thereby the Earl of *Landerdale*, and the Lord *Maitland*, are found lyable, neither for any liquid profit or benefit, proven or alledged to have been reaped and enjoyed by either of them, but for omission of Duty and Diligence, in restraining and punishing the other Officers of the Mint transgressing, and the penal Sum decerned against the Earl is 57000 *lib. sterling*: And the Probation the same that had been adduced before the Commission.

This Decreet being pronounced upon the 20th of *March* 1683. There is a Letter procured from the King, dated the first of *May* the same year, direct to the Thesaurer, bearing, that the King had seen and fully considered the Decreet of the Mint, dated the 20th of *March* last, whereby the Earl and the Officers were justly found lyable in great Sums, and  
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his Majesty being convinced of their Malversations, the same ought not to pass without severe punishment, yet calling to mind the Earl and Lord *Maitland's* forwardness in his Service, in their several Stations, and the Services of their Predecessors, and they having submitted to the King, and petitioned his Favour; Therefore it was the King's pleasure, they should Dispose to the Earl of *Aberdene* the Lands of *Dudhope* and others formerly belonging to the Earl of *Dundee*, within ten Miles of *Dundee*, and that they should Dispose to the Viscount of *Dundee*, the House, Yards, and Park of *Dudhope*; The said Viscount paying to the Earl of *Aberdene* 20 years Purchase, for any Lands to be disposed to him, which formerly had been stated in a Rental, declaring his Majesties Pleasure, that the saids Lands should be free of all Burdens and Incumbrances, especially the Warrandice of the Lands and Estate of *Craig*, the Lady *Maitland's* Joynture, and the depending Process at the instance of the Creditors of *Dundee*; or otherwise that such Warrandice be given, as should be satisfactory to the Earl of *Aberdene* and Viscount of *Dundee*; Upon performance of all which, the King did Declare, he would give a full and general Indemnity to the Earl of *Lauderdale* and Lord *Maitland*, for any preceeding Cause or Offence, Civil or Criminal: And further declared his Pleasure, that the Earl and Lord *Maitland* should discharge and renounce all Action of Relief competent to them, against the Master or other Officers of the Mint; and for further Security, His Majesty did thereby Assign and Dispose to the said Earl of *Aberdene* and Viscount of *Dundee* the Decreet of the Mint, ay and while the Earl were payed of 16. and the Viscount of *Dundee* of 4000 pound *Sterling*.

The Earl and Lord *Maitland* being required to Dispose the Estate of *Dudhope*, conform to the King's Letter, Instruments were taken against them, to perform the same within six days.

The said Earl and his Son being in these Circumstances, after two rigorous and unfavourable Tryals by the Commission and the Decreet of the Mint, precluded from all access to the King to represent their Case; And the great Sum decerned against them, being appointed to be divided amongst these, who influenced all the Affairs of this Nation, whose Interest then appeared above-board; The high Chancellor of *Scotland* to have the first and most considerable share, and another share to the Viscount of *Dundee*, a person who had great Interest at Court, and who thought his Service to the Earl of *Aberdene* in that matter deserved a share to himself: And a 3<sup>d</sup> Clause of the Letter being to discharge the relief, which had been of great value to the Earl of *Lauderdale*; and that Clause was not obtained for love and favour to the Officers of the Mint, but particular pactions were made with them, for payment of great Sums of Money before they should be exonerated, which Sums were actually payed to other Ministers of State, whereby all the Avenues to the King's Ear were precluded; And all at the cost of the Earl, and being under the Impression and fear of a present rigorous Execution, for exhausting his Estate, and seeing himself also exposed to the hazard of a Criminal Process, whereof the event was as well predetermined by the Commission, as that of the Civil Process; what could the Earl or his Son the Lord *Maitland* do more reasonably than as Merchants in a Tempest, to throw away a part of their Goods for



security of their Lives, and on these Considerations, the Earl his Son and Friends did grant two several Bonds to the Earl of *Aberdene* for 100000 pounds *Scots*.

The Earl of *Aberdene*, having also suffered an alteration in his own Circumstances within a short while thereafter, the Earl of *Lauderdale* did immediatly raise a Process of Reduction of the foresaid Bonds for 100000 pounds, and of the Decreet of the Mint which was the ground thereof, libelling upon the several Circumstances and steps, by which that matter did proceed, and upon the qualifications of Concussion, whereby the saids Bonds were extorted from him ; The Lords before Answer ordained, the deceased Earl of *Lauderdale*, and Lord *Maitland* to adduce what Probation and Evidence they could, for instructing the qualifications of Concussion, and the Defender to adduce a Probation that the Transaction was voluntary, and of the Defenders unwillingness to accept of the Donative, and of any other Alleviations for taking off the qualifications of Concussion, and accordingly there is a Probation adduced.

The Earl of *Lauderdale* having assigned the Effect of this Process of Reduction, in favours of the Lord *Hatton* his Son, and Sir *Robert Mill* of *Barntoun*, two of his Cautioners ; They do insist upon the Grounds formerly mentioned, both for reducing the Bonds and Decreet.

It was Alledged for the Defender, that the Decreet of the Mint being pronounced by the Supreme ordinary Judicatory of the Nation, upon full Debate and Probation, It is *Res judicata*, in which all that is or can be now alledged, either is, or ought to have been proponed, So that the Defender is not obliged to enter into a particular Debate or Consideration of the grounds of that Decreet, *Nam res judicata pro veritate habetur.*

2. The same Subject was also determined by a Decreet arbitral pronounced by the King's Majesty, which is contained in his Royal Letter, upon the first of May 1683. In which he doth signifie his Pleasure in relation to that Decreet, proceeding upon a Narrative that the Earl and Lord *Maitland* had fully submitted to his Determination. 3. There is here a Transaction, in so far as by the King's Letter, all the Sums decerned being 57000 pounds, are restricted to 20000 pounds *Sterling*, whereof only 16000 pounds to the Earl of *Aberdene*. 4. That 16000 pounds is restricted by Transaction to the Sum of 100000 pounds *Scots* Money, which is little above the half of what was assigned by the King to the Earl of *Aberdene*. 5. That Transaction was homologat once and again, in so far as, 1. The Earl having granted an Bond upon the 3d of *August* 1683 ; He granted another Bond of Corroboration of the same Sum, with other Cautioners, upon the seventh of that Month 2. The same was homologat, in so far as the Viscount of *Dundee* being appointed to pay 20 years Purchase to the Earl of *Aberdene*, for any Lands that ever had been in Rental, and were ordained to be disposed by the Earl of *Lauderdale* to him, which Clause of the King's Letter, being assigned by the Earl of *Aberdene* ; The Earl of *Lauderdale* obtained a Suspension of a Charge, procured by *Dundee* on that Assignment, and *Dundee* was thereby obliged to pay or consign a considerable Sum of Money. 3. The Earl of *Lauderdale* did dispoise the House and Yards of



of *Dudhope*, with relation to the Decreet of the Mint, and the Kings Letter, and thereby did homologat both. 4. The Remission and general Exoneration of all Causes Criminal and Civil, was accepted and made use of.

It was Replied, that the material Defences are only two, *viz. res judicata*, by a Decreet *in foro*, and *Res transacta*, and the rest of the grounds insisted on, being of little Weight or Importance, may be taken off in a few words: It is therefore Replied, 1. As to the Decreet Arbitral pronounced by the King, it wants a Submission, which is the most essential part of a Decreet Arbitral; it is true, there was nothing more earnestly desired by the Earl and his Son, than to have their Causes brought before the King himself: To whom they would have submitted with all imaginable cheerfulness, and who would have given them the Opportunity to be equally heard in their own Defence; but that Submission was altogether rejected, though often urged, and particularly, the Lord *Maitland* having judicially compeared before the Session, refused to stand in opposition as a Defender in any process at the King's Instance, offering an intire Submission to the King; and as it was considered to advance the Interest designed, to obtain a Decreet at that time, so the same Interest procured the King's Letter, which is now called a Decreet arbitral, but without allowing the Parties concerned any access to the King, so much as to lay their Interest at his Feet.

2. As to the Acts of Homologation, the same are of no Import, For 1. The second Bond was within four days after the first, and Committed and Treated from the beginning, because the Earl of *Aberdene* did desire, to have a number of the Earl of *Lauderdale's* Friends engaged for him, who would not be so easily conveyed as the Cautioners in the first Bond, and no man would suspect, that the Earl would officiously have offered to engage so many of his Friends, if it had not been Communed, and the Agreement stuck upon it. 2. The Suspension against the Viscount of *Dundee* was no Homologation, But on the contrary, an Evidence of the Earl of *Lauderdale's* unwillingness, in every step of that Transaction, for when he had ended with the Earl of *Aberdene*, and hoped that he might by his Assistance have been extricated, he found it was more easie to involve him in Difficulty, than to relieve him from it: And he was pushed with the same Violence by the Viscount of *Dundee* for his share, and was in the same difficulty as formerly, so as the Suspension did signifie his unwillingness to perform, he resolved to make his Performance as little profitable to *Dundee* as he could, and did oblige him to Consign that Sum, which by the quality of the King's Letter, he was ordained to pay to the Earl of *Aberdene*, but neither did nor would receive the Money, neither was that Assignation taken to, or used by himself, but by the Lord *Hatton* his Son, and the consigned Money lies yet in the Clerks hands. 3. The Earl of *Lauderdale* disposing the Lands of *Dudhope* to the Viscount of *Dundee*, was a meer act of Obedience and Necessity, and no voluntar act of Homologation of any thing that had past. 4. The acceptance of the general Remission and Exoneration was no Homologation, but the danger of civil and criminal Prosecution, being the true mean of Extortion of the Bonds quarrelled, and whereby he



was further obliged to do other deeds in favours of the Viscount of Dundee, and Officers of the Mint, the acceptance of his Liberty and Security from these and the like Exactions, is no Homologation of what was extorted from him, but if after that Exoneration, any voluntar or free deeds had been done without Impression or Necessity, these might have been reckoned Homologations, but none can be reckoned such, that were done so long as he remained under the same Power and Impression.

As to the defence of *res judicata*, by a Decreet *in foro*, the Pursuers are very loath to use the lest Reflection against the Earl of Aberdene, but do very willingly acknowledge, that he did shew a great Inclination to Justice betwixt man and man, as well as an unwearied Application and Diligence to distribute the same in the high and eminent Stations, in which he was placed; but as Interest doth blind the most peircing Eye, so the Pursuers are confident that the Earls procedure and management of this Affair from first to last, will not run paralel or suitable to all the rest of his Actions, he had a promise of a considerable Donative from the King, and the Pursuers do heartily wish he had effectually got it, but it was both a great Misfortune to him and the Family of Lauderdale, that the Defenders gratification was set upon that Fond.

It is acknowledged, that the Civil Law affords many Citations that *res judicata* was not easily retracted, but these Citations will not meet the case of every Decreet pronounced, even by the Supreme Judicatorie of this Nation, for by the Civil Law, all Actions were first pursued before inferior Judges, and their Decisions did not operate the Exception *rei judicata*, but were called *sententie*, from which Parties might appeal to a higher Judicatory, and in that appeal, they were not tied to the same grounds debated before the inferiour Judge, and to quarrel his Sentence upon Iniquity, but were permitted to propone new Alledgeances in Law or Fact, and adduce new Probations. *L. 6. §. 1. Cod. de Appel. & Consult.* whereas by our Law, all Causes may be in the first instance pursued before the Supreme Judicatorie, and therefore, in place of these Appeals, our Practice doth allow Reductions, as well of the Sentences of the Lords as others; It is true, the Sentence of the Lords cannot be reduced upon Iniquity, because if a Sentence were once reduced as unjust, that Sentence might be again reduced, & *nullus esset finis litium*, and therefore the precise grounds debated and determined by the Lords, may not be retracted by them, no more than *res judicata* by the Civil Law, and likewise supine Negligence and willfull Omission of Parties may be punished by the Lords, so as these grounds which would have been of great Importance in the first instance, would be less regarded in the second, yet upon material, new and distinct Grounds, not formerly under the Lords Consideration and repelled, the Lords do ever resume the consideration of their own Decreets, and do daily reduce the same, and therefore we have no such exception in our Law, as *res judicata* to hinder a review and new consideration of the Grounds in the Decreet, but we only admit that Exception to support the Decreet, if otherways formal, that it cannot be overturned upon the same Grounds.

The Pursuers shal therefore insist upon the following Points, which have



have not at all been debated, or under the Lords Consideration before pronouncing of the Decreet. viz. 1. The Session, is by the constitution thereof, appointed to be the Supreme Civil Judicatory of the Nation, but it is only a civil Judicatory, wholly incompetent for the Decision of any thing that is Criminal or Penal, whereas in this Process, all the conclusions of the Libel are intirely Penal, and have nothing of a civil Interest in them; It is true, that oft times there doth arise a civil Interest to a Party, as in spuilzies, and sometimes to the King, as by Escheats, where by an expresse Law, there is a particular Penalty imposed in favour of a privat Party, or the Publick, and then that Crime being legally tried, the Penalty becomes a civil Right, to the publick or to a privat Party, but where the Penalty is altogether Arbitrary, and no particular punishment imposed by any special Law, upon the Transgression, nor any special Damage arising to the Publick, nor any profite instructed to arise to a private party, in these cases the Session is no competent Judicatory for such civil Actions, and all the Conclusions of the Decreet of the Mint are wholly Penal, imposing an arbitrary Punishment upon pretended Transgressions, without any special Law imposing the Penalties decerned upon the Transgressours; much less upon the Generals or other Officers of the Mint, to make them lyable *in solidum*, upon pretended Omissions of Duty or Diligence. 2. As this point is very clear in Law, so it is evident, that the Ministers at that time, would not venture to impose so far upon the King, as to obtain from him a Warrant to pursue before the Session for any other than a civil Effect; And his Majesties Letter, dated the 2d of October 1682. which was the Warrant of the civil Process, bears expressly, that the King had ordered the Defender to cause prosecute the Officers of the Mint before competent Judicatories Civilly or Criminally; And that it was then his Majesties pleasure, that the saids Officers, who were all named, except the Lord Maitland, should be prosecuted civilly before the Lords of Session only; So that as the Session is a Civil Judicatory, it was the Kings Pleasure, he should only be prosecuted civilly before that Judicatory, and the Kings Letter being directed to the Defender, if he did order the Advocat to prosecute, or did sit Judge, or determine in any matter not suitable to the Letter or competent to the Judicatory, the Defence of *res judicata* is of no moment in this Case.

It remains then to consider, whether the Sums decerned for pretended Malversations in that Decreet, be founded on a Civil Interest, or Penal and Arbitrary.

And 1. The Lords are intreated to consider that Article of the Copper Coin, for which the Officers of the Mint are decerned in no less than 400000 pounds Scots, by a meer arbitrary Punishment, and extraordinary Cognition; For it is not Libelled, that the Officers of the Mint were *Luctati* in that Sum, nor is it Libelled that any Damage, much less to so great a value, did arise to the Exchequer or Revenues by that Coinage, nor is it Libelled, that by any special Law, Practice or Precedent; The Coining of Copper beyond Warrant, is punishable by Confiscation, or by payment of the Value of the Copper so unlawfully coined, but it is Libelled, that the Coining of Copper without Warrant, is punishable by Death, and it is argued at the Crosse and Better (A)



in the Act of the Process of the Mint, that the Act of Indemnity doth not secure from the Crime, and far less can it secure from restitution of the Value of the Copper unwarrantably Coined; and accordingly the Officers of the Mint are decerned *in solidum*, for the value of all the Copper alledged unwarrantably Coined, without Deduction of the Expence of Coinage before, or without deduction of either Expences or Intrinsic Value of the Copper, after the Indemnity, which is a Decernitor meerly Penal and Arbitrary, not founded upon any special Law, and wherein it was not argued, nor under the Lords Consideration, that no arbitrary Punishment can be imposed by the Session.

2. No Penaltie or Confiscation arising from a Capital Crime, can be imposed by the Session, or decerned to belong to the King, unless the Crime were first pursued Criminally, because the pecunial Penalty is only consequential from the Criminal Trial; Therefore the Transgression of the Copper-Coin being libelled to be Capital, no pecuniary Penalty could be exacted before any Judicatory whatsoever, unless the Capital Penalty had ben restricted, which here it was not, being expressly reserved.

3. There is another great Article of 144000 pounds Scots, decerned as a meer Penalty for Coining 182 Stone of Chissels, Heads and Sweeps without Essay, albiet these were ever since the foundation of the Mint so Coined without Essay; And albeit there be no manner of necessity for essaying the same, seing they had already undergone two Essays, which is all that any current Coin doth undergo, and these being only the smaller parts of the Lignets or Plates which are coined, and have undergone all due Essays, which not being of such Shapes, or so large as to be capable of the full Impression of the Coin; It is absolutely necessary, that before coining the same, they be melted of new, and as if it were possible that by a new melting, they could become less fine, or as if the pure Money would evaporat more than the Allay, it was found a great Crime, that these were Coined without a 3d Essay; And supposing that to be a Fault, which never was before, nor since, nor will be at any time, otherways practised, the penalty of each Stone so coined, as is particularly exprest in the Decernitor of the Decreet, is no less than 1186 Merks, which is the true value of the Bulzion coined; and whether this be Penal, or if the penalty be suitable to the Transgression, or if it be a Civil Action; the Lords are to judge:

4. The Officers of the Mint are not decerned each for their respective Transgressions, but *singuli in solidum* upon pretended Omissions of Diligence; And though Omission may be in some case a Ground of a Civil Pursuit, yet it is only *quatenus abest à patrimonio nostro*, but in Crimes *nox à Caput sequitur*.

5. This Decreet is not only null, in respect the said two Articles, amounting to 50000 lib. Sterling, or thereby, are meerly Penal; But also for want of Probation, of the following Points, *viz.* 1. As to the Copper-Coin. There is 14000 Stone of the first Copper Journal, only proven by the single Testimony of John Falconer Warden, and his Testimony was not taken before the Session, but before the Commission of the Mint, and a Probation in one Process before the Session, is not Probative, by Repeating the Depositions of the same Witnesses



Witnesses, before the same Court, much less are the Testimonies of Witnesses taken before any other Court Probative before the Session; But least of all, could the Probation of Witnesses before the Commission, be sustained, as Probative, before the Session, because the Commission was no Judicator at all, having no decisive Power, nor was it at all Authorized, to take the Testimonies of any Witnesses, except in the Exhibition of their Books. And that *John Falconer* was not adduced before the Session, is evident by the Decreet, wherein his Heir is called upon the Passive Title, because he was dead, before the intenting of it. 2. Neither is the remanent 10000 Stone of the Copper-Coin proven, because the Witnesses adduced, were not purged of Partial Council, but were first Unwarrantably, and Illegally entised to Depone before the Commission, by perswading them, it was no Judicial Oath, but an Oath of Credulity, they were to emit, as the Report bears, in that place, where the Commissioners did endeavour to perswad the deceased Earl of *Lauderdale*, to depone upon his Oath of Credulity, as the other Officets had done, but he was not caught by the bait. And these Testimonies so elicit, were Repeated before the Session, without further Probation, except that such of them as were alive were called, and asked, if they adhered to their Testimonies, without purging them of Partial Council, and they neither did, nor durst retract under the hazard of Perjury. 3. Sir *John Falconer*, one of the two Witnesses, Deponing upon the second Copper Jurnal, was corrupted, by express promise of Favour and Pardon, as is clearly instructed by the Earl of *Perth*, Viscount of *Tarbat*, and Sir *John Falconers* Depositions, and that also appears, by Sir *John* his compearing at the Bar, and declining to propone any Defences. And it is further Proven, by the forsaide Testimonies, that when Sir *John* began to speak somewhat for himself, he was minded by the Defender at the Bar, that he behooved to take his hazard of the Issue, if he did so. And it is without debate, that a Witness receiving Reward, or Promise, is presumed to depone falsely, and his Testimony rejected. 5. March 1624. *Gichen contra Cochran*. 4. None of the Witnesses adduced, were *habile* Witnesses, being all Parties, as Officers of the Mint, and the Pursuer hath the Election of the manner of the Probation, by Oath of Party, Writ, or Witnesses, according to the nature of the Pursuit; But a Pursuer offering to prove by Witnesses, cannot demand the Oath of Party, nor can he who offers to prove by Oath of Party, examine Witnesses, and here nothing was referred to Oath of Party, but Depositions of Parties first Elicite, were then repeated as Depositions of Witnesses. 5. The Article of 6000 *lib.* Scots for a Bribe, was not at all proven, nor found to be proven, but a retired Ticket was found presumable, to have been granted for a Bribe, which was a rare Presumption. 6. Annualrents were decerned, for the said pretended Bribe, albeit there was no special Interlocutor, anent the Relevancy of the Libel of Annualrents, and that the Bribe, it self fell not properly under the Commission of the Mint, being an Inquiry of another nature; and consequently, ought to have been no Article in this Process; and albeit these points, for opening the Decreet, be long and tedious, yet they are but a few Examples of the nullities of that Decreet, or reasons for reducing the same; There being



ing no special Interloquitor, in relation to any of these grounds now represented. And Lastly, the Decreet is wholly to be considered, as nul, in so far as concerns this Earl of *Lauderdale*, then Lord *Maitland*; because, though he be Marked, declaring, that he would employ no Procurator, and proponed no Defence, yet the Decreet is Extracted against him, as compearing by his Procurator.

The Pursuers further Insist, for eliding the Defence of *res judicata*, on this Reason, that not only there are pregnant Instances, that the Defender having a Promise of a Donative, with a Provision, that he could find a Fond, had in his view and prospect, from the rise of that Commission, to make his Donative effectual, at the Earl of *Lauderdale's* expence, but likewise, having proceeded, both in the Commission and Session, and managed the matter with greater eagerness, than otherwise the Justice and Equality of his Temper did allow, and having without question communed anent the receiving his Gratification, out of these Fines, before the Decreet was pronounced; and having immediately after, procured a Letter from the King in his favours; these joynt Circumstances, do state the Defenders in another case, than the King, or any other Purchaser of the Right of this Decreet; For as by the Civil Law, and Ours, Actions of Damage, was allowed against a Judge, who pronounced an unjust Sentence; And though he did it not by Corruption or Fraud, or had no benefit by it: but a Judge in so eminent a Station, acquiring a gratuitous Right, to a Sentence, which he himself did much Influence, he can never be heard to obtrude the Defence of *res Judicata*, but in a Process with such a Judge, the Equity and Justice of such a Decreet, can only support it, and it cannot be pretended, that he should *lucrar: ex alieno damno*.

As to the Defence of the Transaction. It is Answered: 1. Here is no Transaction; For *Transactio* is *litis incerta neque finita, aliquo dato, aliquo remisso, conventa decisio*. And by that Law, a Transaction was the most free and volantar of all Contracts, whereby a Party, to redeem the trouble of a Pley, Intented or Designed, did make a settlement. But if the Pley was ended by a finall Sentence, it was no more the Subject of Transaction. *l. 32. cod. de Transact.* Because, If that Sentence was Just, it was an effectual Ty, if not, no benefit was to arise to the Obtainer thereof; And the Transaction was not reckoned free, where there was Execution of a Decreet, to induce the Party thereto. 2. Here is *nihil remissum*, for though the King's Letter, do not appoinr Lands to the Value of the Sums decerned, nor doth it Assign the whole Decreet to the Defender, yet it appoints a Discharge to be granted of all Actions of Relief, against the other Officers of the Mint. The granting of which Discharge, with the Sums to be Disposed, is more than the whole Sums Decerned; For the Earl is not found lyable for his proper Faults, or Intromission, for so much as the Value of the Sum demanded by the Defender, but he is found lyable for the Facts and Deeds of the other Officers, and negligence in punishing of them. And he is found lyable upon the Assertions, Confessions, and Extra-judicial Acknowledgements of the other Officers, for all which there was Action of Relief competent to him, and being appointed to discharge that Action of Relief,



lief, the Obedience to the King's Letter, was a greater Penalty, than the payment of the Decree; only the present performance, in obtaining so great a Sum, as was in the Decree, being impossible, He was necessitat rather to discharge the Reliet, and do eis what was in his Power. 3. There is no Transaction with the Defender, because he has remitted nothing of what the King's Letter did appoint; for the Sum acclaimed by the Defender is more valuable than the Lands the King did appoint to be Disposed to him. And albeit the Letter contains an Assignment to 16000 lib. of the Decree, in favours of the Defender, yet the Assignment runs in these Terms, *And for further Security, we do hereby Assign, &c.* So that the Assignment being only a Corroborative Security, because the King could not directly Command the Earl of Lauderdale, and Lord Maitland to Dispose the Lands, but could effectually Assign the Decree, it was Assigned for further Security, to compel the Earl of Lauderdale to Dispose. But the Assignment in Law did extend no further, than the Value of the Subject to be Disposed. 4. The King's Letter having appointed the Earl of Lauderdale to purge certain Incumbrances named, or to satisfy the Defender in the Security and Warrantice of the Lands. It was *factum in restabile* to the Earl of Lauderdale, & *loco facti Imprastabilis*, *succedit damnum & Interesse*; So the Defender having got a Bond, for the full Value, there is *nihil remissum*. 5. *Et separatim*, Suppose that here were a Transaction, yet Transactions, as well as all other Contracts, are Reducible, *ex capite vis & metus*, and Concussion, which is *metus a magistratu injectus*, is an unquestionable ground of Reduction, with the same caveats, that is required in every Reduction, *ex capite vis & metus*, viz. Providing there be such a *metus a magistratu injectus*, *qui cadere potest in constantem virum*.

It is in vain to cite Laws, for proving that, which amongst all Lawyers is an undeniable Principle; therefore taking for granted, that *vis & metus*, may annul any Contract, being *metus iustus*. And also supposing, which no Lawyers denies, that *metus vite, cruciatus corporis, omnium vel majoris partis bonorum* is *metus iustus*. The Pursuer that in the next place make it appear, that in this case, the Bonds quarrelled, were extorted by such a force, by the following Qualifications, viz. 1. The Earl of Lauderdale having fallen out of favour at Court, by degrees, as the Defenders Influence increased, the Commission of the Mint was procured by the Defender, and the Viscount of Tarbat depones, that the Defender went out of England, to haste up the Commission of the Mint, which accordingly is dated, when he was at London, in April, 1682. And when this Commission was obtained, the Earl of Lauderdale having endeavoured to represent his business to the King, and gone to London for that effect, he had no access. 2. The Defender had a prospect, to have an Interest in what should arise by the Mint, as appears by the following Evidences. The Viscount of Tarbat proposed to the King, that the Defender might have a Gift of what was due upon the Mint in Harvest, 1682, Which was before the Intenting of the Process before the Lords. And Tarbat further Depones, that having signified his Proposals to the Defender, he had his thanks; and the Viscount of Dundee having parted from Scotland, when



when the Process was depending, in February 1683. He proposed to the Defender a Donative of the same Subject, which the Defender allowed, and accordingly proposed it to the Duke, who said he would speak to the King about it. And whereof the Viscount of Dundie did advertise the Defender, by a Letter of the 13. of March 1683, Which by the Post, would be in the Defenders hands, before the advising of the Process. And that the King had given warrant, for drawing a Letter, in favours of the Defender, before the Decreet of the Mint came there, and that so soon as the Decreet was sent up, the Letter came down: So that the Defender had Treated on the Subject, before the Decreet was obtained, or Intented. And a promise of the Donative was obtained, before the Decreet was Extracted, or sent up; and several Letters were writ by the Defender, to the Viscount of Dundie, about acquiring Right to the Decreet of the Mint. And all near the time of Pronouncing, or Extracting thereof. And all of these Letters signified a willingness to have the Gift, only he feared, it would not rise to the Sum proposed. 3. The Defenders extraordinary concern, and eagerness in the management of the Process of the Mint, appears from the following particulars. First, He gave assurance of Pardon to Sr. John Falconer, and did express to the Earl of Perth, that if Sr. John would make discoveries of the Lord Lauderdale's Mal-versations, he would do the King acceptable Service. And desired the Earl of Perth to tell him, that he might expect favour in his own particular Case. And both Perth and Tarbat declare, that they heard the Marquis of Montross say, that he was warranted, to assure Sir John of Pardon, on that Condition. And Sir John depones fully, that he was several times dealt with, by the Defender, to depone against Lauderdale, and further, it is Deponed, that Sir John having insinuat something in his own favours, that the Defender did interrupt him, by telling, he behoved to take his hazard of the Issue, if he did so. 4. In advising of the Testimonies, and especially that of John Falconer Warden, the Defenders extraordinary concern was very Observable, having urged, that his single Testimony might be Probative, and when that did miscarry by a Vote, he said to the Lords. If that was the way they served the King, he would let the King know of it, and thereupon immediately it was moved, that his Deposition being sufficient against himself, and the whole Officers being found lyable *in solidum*, it might be looked upon, as sufficient Probation upon that head; and it was so carried: and his carriage in that Particular, was very remarkable, both to the Lords Ordinary and Extraordinary, and also to the Clerks, as appears by their Depositions. 5. The Defenders caused make great and notable Alterations in Interlocutors, after they were pronounced, and given out to Parties. And particularly that of the Copper-Coin, Lauderdale having alleadged, both upon the Indemnity, 1679. And upon a particular and ample Exoneration, as to the Copper-Coin, The Lords Found, neither could secure the Defenders from being lyable in Restitution, *In quantum locupletiores facti*. And this Interloquitor being seen by the Lord Advocat, and given to the Party. Sir Patrick Hume, about two days thereafter, told the Clerk, it behoved to be Rectified, and these words *In quantum locupletiores facti*, left out. And that the Defender moved the matter to the Lords, and caused alter the Interloquitor, and rebuked the Clerk, for



for giving a double of the Interloquitor to the Party. Albeit at that time, Interloquitors were not signed by the Judges, and Parties had no further Security to rely upon than Interloquitors under the Clerks hands, yet this Interloquitor was changed, not in a Circumstantial Point, but intirely altered so far, that if the Officers had not been lyable further, than *in quantum lucrati*, no valuable Sum could have been fixed upon the Earl of *Lauderdale*, and he was only in that case, to have been lyable for himself, and not for another, whereas, by that Alteration, he came to be decerned in no less than 40000 *lib.* Scots, otherways he could not have been made lyable for the 400th Part of that Sum, and thereby all had been labour in vain; and in the same manner, it was once carryed by a Vote, that the Wardens single Testimony should not be Probative; and it is no wonder it should be so Found by the Lords, yet the Defender having signified displeasure, and threatned to represent the Lords to the King. The Vote was altered, and since the Defenders great Influence, and Power, could so much overaw the Bench, in two Votes more considerable, than any two that past, so long as the Defender sat there, what wonder was it, if these Votes, with many concurring Circumstances, did not extort a Bond from *Lauderdale*, and *Maitland*. And in like manner, the Interloquitor finding the Earl of *Lauderdale* lyable for all the Malversations of the Officers of the Mint, is not to be considered as an Interloquitor of the Lords, but procured by the same Influence and Engines as other Interlocutors were: as appears by many Testimonies, and particularly that of the Clerk, who depones, that after advsing of the Probation, when the Clerk had drawn the Interloquitor. Sir *Patrick Hume* made another Draught, in other Terms. Whereby the Interloquitor finding the Earl of *Lauderdale* lyable *in solidum*, for the Bullion, was repeated, and applyed to all the other Articles of the Mint, and the Clerk having declared, that he was not clear to Extract the Decreet in these Terms, unless it were brought to the Lords, and considered by them. The Defender ordered him to transcribe the Interloquitor, and bring it to the Lords, which being done, and read before the Lords, they acquiesced, and the Decreet was Extracted accordingly; so that on the matter, every Material Article of this Decreet, as it is Extracted, was contrary to the Opinion, and Sentiment of the Plurality of the Lords, *In-vita Minerva*, only by the Influence of the Defender, who was not in use to treat the Lords, or the Interest of the Lieges, in that manner.

6. The Decreet is Extracted against my Lord *Maitland* also, *in solidum*, for all pretended Malversations, since his entry, albeit it be clearly Deposed, that the King declared in a Council at *Windsor*, that he would not have *Maitland* prosecuted in the matter of the Mint, and that the King's Letter, which was the Warrant of the Process, did only name the other Officers of the Mint, not mentioning my Lord *Maitland*: And albeit the Lord *Maitland* Compearing Personally, refused to imploy Advocats, and offered an intire Reference to the King, yet all was rejected; For he was Married, and had the Fee of the Lands of *Dudhope*, and he beloved to be lyable *in solidum*.

7. After the Session was up, the Defender desired the Clerk, and urged him to add a Clause to the Interloquitor, remitting the Officers of the Mint, to the Council, or Justiciary for a further punishment, which the Clerk refusing to adject, the Decreet was Extracted without it.



This Decreet being so obtained, was Extracted the 6. of *April*, and went Post to *London*; so as the Kings return bearing, that he had fully considered the same, &c. was dated the first of *May* thereafter; and so soon as the King's Letter was in *Scotland*, no time was lost to put the Earl of *Lauderdale* to the extremity. He was required upon the Letter, to fulfill in six days, as if it had been a Charge of Horning, after the Decreet so obtained, was avowedly stated in the person of the Chancellor, and a threatening Letter from the King, intimating plainly, that as his Fortune was now become at mercy by the foresaid Decreet, so he must expect no safety for his person, but exposed to a Criminal Process, unless he did comply, and the effect of that Criminal Process had been as well in view, as the event of the Civil Process, and an opinion given as to both, by the Commission of the Mint; and being thus precluded from all means of Legal Remedy, loaded in his Fortune, tarnished in his Fame, and removed from the King's Person, and all access, there was no choice, but he behoved to have submitted to harder terms, if the Defender had imposed them; and it is not believed that there is any case upon Record, wherein such a multitude of pregnant evidences can be found to concur; and the Pursuer is confident, that in the Reduction and Commission at the instance of *John Gray* against the Earl of *Lauderdale*, the tenth part of these qualifications were not found.

It was Duplyed by the Defender, that his Defences stand still relevant. And 1. As to that of *res judicata*, it cannot be questioned, either upon Relevancy, or Probation of what is determined; for the Lords having considered the Probation, and the Relevancy of the Libel and Debate, their several Interlocutors thereanent, cannot be retracted, without acknowledging injustice in the former Interlocutor, and the Defender needs make no further Answer. 2. Neither Libel nor Decerniture is Penal, but most suitable to the Probation adduced, whereby the Officers of the Mint are proven to have transgressed in their respective trusts; and particularly the Article of Chissels, Heads, and Sweeps, was most just, seeing these were Coyned without Essay, and mingled with Allay, and so base Money. And though the Libel contains a Clause to remit the Officers to the Council, or Justiciary, yet the reason was, that the King had so ordered the same. But the King having qualified that Order by a 2<sup>d</sup> Letter, appointing them to be prosecuted civilly, and before the Session only. There was no use made of that Conclusion, to remit the Officers to the Council, or Justices. 3. The Wardens single testimony was sufficient, both because it was clear, that *Lauderdale* had destroyed or abstracted all the Accompts of the Copper Journal, whereby no other Probation could be had: And the Warden being an Officer, his Deposition was Probative against himself, and consequently against all the other Officers; and being a Party, he needed not be purged of partial counsel. 4. As to the alterations of the several Interlocutors, nothing was done but in presence, and by warrant of the Lords; and it is very ordinary, if the Clerks mistake, that the Lords should clear the same. 5. In the former Debate, the Lords took no notice of any thing that was Alléged against the Decreet or Transaction, but only what related to the Concussion. 6. The Defender acquiring right to the Decreet, is *tanquam quilibet*, and it alters not the case, that he was one of more Judges, which might annul many Decrees



creets that had been pronounced anent Wards, when the Duke of *Roths* and the Earl of *Perth* were Chancellors, and had right to the same, and might be of a dangerous preparative to all Judges. 7. The King's Letter was a Decreet Arbitral, and the Submission upon which it proceeds, was contained in several Letters, under the Earl of *Lauderdale's* hand, all produced. 8. The Defence upon Transaction stands also still relevant; And whereas it is Alledged, that *res judicata* is not a subject capable of Transaction. It is Duplyed, *res dubia* may always be transacted, because it may be the Subject of a Process; and seeing the Pursuers do now insist for reducing the Decreet of the Mint, it cannot be denyed the same was *res dubia*. 2. There is here a liquid Remission by the Kings Letter, whereby 20000 Pounds *Sterling* is accepted, in place of 57000 Pounds; so that albeit the Defender had exacted the whole Sum allotted to him, *Lauderdale* still received a Deduction, and *perinde est* to him, whether he received the Deduction from the King, or the Defender. 3. The 16000 Pounds allowed to the Defender, was transacted for little above the half. 4. Transactions are not to be retracted upon any ground whatsoever, *licet nulla suberat causa transigendi*: And the quarrelling of a Transaction is called *Improba postulatio*, and several Laws were cited for proving these points.

And as to the Concussion, the qualifications are not relevant, or are not proven. And 1. The Defenders prospect of acquiring Right to the Decreet, is calumnious, and being *actus animi*, there neither is, nor can be any evidence of it. On the contrary; it appears he declined to have a Donative out of that Fond, and what he acted in this Process, was his duty, and conform to his opinion as a Judge. 2. No threatening was implied in the King's Letter, for there was no need of a Remission as to the Mint. The Criminal Process as to that point being deserted, and a Civil Pursuit only ordered to be prosecuted. 3. The Earl of *Lauderdale* by several Letters, expressed an intire kindness to, and confidence in the Defender. 4. Concussion is ever taken off by a Transaction, in presence of Friends, as in this Case, l. 35. *Cod. de Transact.* 5. The requiring the Earl of *Lauderdale* to fulfill the King's Letter, was only by the Viscount of *Dundee*, and the delay of the Earls Remission, was procured by others, and not by the Defender, as appears by a Letter from the King, long after the Transaction, whereby the King appoints the Remission to be kept up, till several deeds were performed by the Earl.

It was Triplyed, the Defence of *Res Judicata*, is absolutely elided by the grounds formerly adduced, which need not be repeated; and it is a daily practice to reduce all the Decreets of the Lords, even *in foro*, upon any material or competent defence, which doth not argue the Decision of the Lords to imply injustice; And it never occurs with us, that the shadow and form of a Decreet, doth over-rule material Justice and Right. 2. The Decernitor and Libel is meerly Penal, for though there be a pretended probation of the Facts, yet it is not Alledged there is any Probation or Liquidation of damages by these Facts to the publick, or of benefit and advantage to the Actors, much less can it be justified by a Civil Process, that all should be lyable *in solidum*, without any particular Law; but as a meer punishment of alledged negligence. And the



pretence that the reason of the severe Decernitor, for Coyning the Chisels, Heads and Sweeps without Essay, was, because they were unwarrantably mingled with Allay. It is Triplyed, This is neither Libelled, admitted to Probation, nor found Proven; but the reason exprest in the Decision, is simply the coining without Essay. And whereas it is pretended, that the conclusion to remit the Officers to the Justices, was by warrant of a Letter from the King, appointing them to be pursued Civilly and Criminally, which was restricted by a second Letter, appointing them to be pursued to Civil effect only. It is Triplyed, the last Letter, which was the warrant of the Civil Process before the Session, is dated the 2d of October, and the Summons containing a conclusion to remit, expressly contrary to the Letter, is not till the 25 of November thereafter, both in the year 1682.

To the 3d, Anent the Wardens Deposition, it was an extraordinary practice, to sustain a single testimony against the sentiment of the Lords, and all Mankind. And as to that pretence, that he being a Party, his Deposition should be stronger, and that *Lauderdale* had taken away the Account of the Copper-Coyn, so as no other Probation could be had. It is Triplyed, If the Warden was a Party, he could be no Legal Witness, and nothing was referred to his Oath, as a Party, and he was never Examined before the Session, neither was there ever Records kept of Copper-Coyn, since the foundation of the Mint; and if the Alledgance could not be proven, *Actore non probante absolvitur Reus*.

To the 4th. Many material alterations were made in Interlocutors; and though the President, or any Judge, may cause a Clerk alter an Interlocutor, if he do mistake the import of the Decision, yet the alterations here quarrelled are gross, which alters an Interlocutor from being on the matter an Absolvitor to an Interlocutor: By which the Earl was found lyable for no less than 400000 Pounds Scots. And this Interlocutor of the Copper-Coyn, having been given to the Party under the Clerks hand, which is all the security that Parties could then have, one Title thereof could not have been altered *ex proprio motu* of the Judge; but by the application and hearing of Parties, and what the Defenders part and share was in the alterations of these Interlocutors, from which alone these monstrous Sums do arise, will be apparent to the Lords, upon perusal of the Testimonies.

5. Whereas it is Alledged, that the Lords in the former Debate took no notice of the Reduction of the Decreet, but only of the Concussion. It is Triplyed, It is true, the former Interlocutor mainly notices the Concussion, because the Decreet was left as an untenible and deserted Post, which now the Defender would resume, when the Concussion is proven;

6. It alters the case much, that the right of the Decreet is stated in the person of the Defender, who was so active in procuring it; and there is no inconveniency that all Judges who have, or shall acquire gratuitous Rights to Decreets, in which they did judge, should be restricted to use these Decreets, only in so far as they are founded upon material Justice and Right.

To the 7th, That the Earl of *Lauderdale's* Submission to the King, is instructed by his Letters produced. It is Triplyed, That when these Letters were writ, the Process of the Mint was not raised, and the clear intent of



of them was, to prevent that Process: And because the Earl looked upon the Defender as the chief Minister, and first Mover, and the only person that could prevent his trouble; and how far the Defender was prevailed with, by these insinuations of kindness, or how far the Submission to the King was accepted, appears by the Sequel.

8. The Defence of Transaction, is as weak as the other; And whereas it is alleadged, that the Decreet of the Mint being *res dubia*, was the subject of a Transaction, because a Process of Reduction could be intended.

It is Triplyed, That Decreet might indeed in all Justice be reduced, and could not subsist in Law, and so considered as in it self, it was a proper subject of Transaction; But in as far as the right of that decreet, whether just or unjust, was stated in the person of the Defender; It was not to be considered as *res dubia*, he who had the art and influence to procure it, by the same means, was much more able to maintain and support it, so that coming in his Person, it was not at all to be considered as *res dubia*; and therefore was not the subject of a Transaction as to him, especially seing he was a gratuitous Purchaser, and he can never make use of that pretended Transaction, or be enriched thereby, unless it were supported by Justice upon the matter. 2. There is *nihil remissum* by the King's Letter, because *Lauderdale* was thereby ordained, and afterwards forced to discharge his Action of Relief against the other Officers, and how valuable this Relief was, will appear, either by considering the Decreet, whereof the principal Point is, that all are lyable *in solidum*, or by considering the King's posterior Letter, of the 25th. of March, 1684. whereby *Lauderdale* is of new pressed to Discharge the Relief, because as the Letter bears, the Officers of the Mint were Fined; and if *Lauderdale* should have access to his Relief against them, he would be a gainer and no loser by the businels of the Mint; And in that Letter he is pressed to Discharge that Relief, and the Defender ordered to expedite his Remission and deliver it, if he would Discharge, otherwise to return the Remission, that he might be vigorously prosecuted; and the plain Language of the matter was this, The Defender had partners, not only *Dundee*, but others were to be gratified by the Fines, which were truly exacted from the other Officers of the Mint, and for which they payed liberal Sums, all upon *Lauderdale's* charges, so that any who will consider the Tenor of the King's Letter, and the Execution upon it, they will find nothing Remitted there. 3. There will be as little found Remitted by the Defender, the sum acclaimed by him, being the full value of the Lands appointed to be remitted to him; neither had *Lauderdale* his election to Dispose, or pay the value; but that was in the Defender's power, and he has made his election to take the value; for *Lauderdale* being simply ordained to Dispose, and to purge certain Incumbrances named, which was *factum impræstabile*, or to satisfy the Defender in the warrandice, which was alone in the Defenders own power, and he not having thought fit to take such warrandice as *Lauderdale* would give, but made his election of the full value, where lyes the Transaction: It is true the King assigned 16000 *lib.* sterling, but in so far as it exceeded the true value, it was meerly penal; And suppose *Lauderdale* had been Charged upon that Assignment, and suspended upon obedience, and consigned a



Disposition, with absolute warraundice; and that the Defender had insisted for purging the Incumbrances, conform to the Letter, *Lauderdale* would have answered, it was *factum impræstabile*, and the Lords could decern no more than the value, which is given to the full; and the alledgance of Transaction being alledged by the Defender, he ought to have proven *aliquid remissum*, to instruct the Transaction.

The qualifications also of Concussion are most relevant and pregnant; and it were in vain to lose time, in proving, that Concussion may take place in Transactions, which the Defenders Procurators will not deny, when they consider *l. 13. Cod. de Transact. l. 12. Cod. de his qua vi met.* And 1. As to the prospect, though it be *actus animi*, and can have no precise and positive Probation; yet the circumstances of the managment of the Affair, are Facts which do clearly presume it; and it is specially proven, that the thing was communed with the Defender, and application made to the King or Duke, and an account thereof given to the Defender, before the date of the Decreet; and the Defender never declines the Donative, but only feared the Earl would not be drawn to give Money enough, and therefore was careful to put him in these Circumstances, that he had no choice.

2. The King's Letter contained a great threatening of a Criminal Process, whereof the Decision was predetermined in the Defenders opinion, by the Process of the Mint; and there was nothing done to desert that Criminal Process; But on the contrair, it was reserved to lash the Earl, till he should fulfil every Article of the first Letter, as appears by the King's other Letter, formerly mentioned.

3. Though this pretended Transaction was *intervenientibus amicis*, yet it was to be rescinded, notwithstanding of the Law cited, because that Law speaks of a Reduction of a Transaction in presence of Friends *metus velamento*, that is upon pretext of fear: And that Law bears, *Transactionem intervenientibus amicis, re vera processisse*; In which case, *metus velamento non rescinditur*; But here the presence and concurrence of Friends, could not remove the real and just impression of fear; Nor could the Friends give any other advice, than to Transact: So here is no pretence, or *metus velamentum*, but a just fear, *qui cadere potest in constantem virum*.

4. As to the Letters produced, they do indeed express a great earnestness to be protected from any further Prosecution upon the report of the Mint, and a chearful Submission to the Sentence, depriving the Earl of *Lauderdale* of all publick Trust, and a willingness to depend upon the Defender as his Protector: But if the Defender did not at all protect him, but prosecute him to the rigor, what does that import, and whether he was protected, is evident by what is above related, and appears by the King's second Letter, produced by the Defender, containing the outmost severity and rigor, if *Lauderdale* should not fulfil.

And whereas it is pretended, that the posterior Letter, and the stopping of the Remission was long after the Defenders Transaction was concluded, so any threats in it, does not concern him, nor were they of his procurement.

It is Triplyed, It is true, that Letter was after the Transaction, and the Pursuers do freely acknowledge, they believe it was no ways of the De-



Defenders procurement ; And the plain truth is this, the Defender desired a great Sum for himself from *Lauderdale*, but he desired no partners : On the other hand, no man would be interested for him, in such a purchase without reward ; And therefore *Dundee* who was immediately Employed, took a share for himself, and these whom he employed at Court, would not Act, unless they had also their share, and their shares were privat Transactions with the Officers of the Mint ; and therefore there was no remedy, but the relief must be discharged, not for love and favour, but very onerous causes ; but *Lauderdale* never proceeded one step, without a necessar force and violence ; First, he refused all treaty, then he packt up with the Chancellor, who was the chief Minister, and first mover of the Affair, hoping that he who had involved him, might also extricat him out of his difficulties ; but that was not so easie, but all the Partners behoved to have their share, and the Defender might neither be ingrate to his Partners, who had purchased his share, nor could in that matter justifie *Lauderdale*, without reflection on himself ; And therefore poor *Lauderdale* might struggle, but still he got lash upon lash, till all was extorted, and it was of no value, whether these threats were before or after the Defenders Bond, the condition thereof being, that the Defender should receive a Remission and Exoneration, and that Remission and Exoneration being still keeped up, and *Lauderdale* dayly kept up, under the impressiion and fear to be robbed of his Life or Fortune, or both ; All that was extorted from him, while he remained under that impressiion, ought to be Rescinded, especially the deeds in favours of the Defender, who was the first mover, and chief instrument of all the force and fear.

In respect whereof, &c.



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